



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
CIVIL SUIT NO 392 OF 2012

SUKHDEV SINGH LALY.....1ST PLAINTIFF

LALY FURNISHING HOUSE LIMITED.....2ND PLAINTIFF

VERSUS

SAMMY LOUIS KARANJA.....1ST DEFENDANT

HIGHRISE ELEVATORS CO LIMITED.....2ND DEFENDANT

JUDGMENT

INTRODUCTION

1. The 1st Plaintiff and the 1st Defendant were at all material times, directors and shareholders of the 2nd Plaintiff and 2nd Defendant companies respectively. According to the Complaint dated and filed on 15th June 2012, the Plaintiffs entered into three (3) separate agreements with the Defendants but that the Defendants failed to honour their obligations. The said agreements were dated 30th October 2006, 31st January 2008 and 4th January 2008 respectively.
2. In the first agreement, the Defendants failed to transfer all shares in Misori Construction Company Limited together with the parcel of land known as L.R. No. 209/20261 registered in the 2nd Defendant's company's name to the name of the Plaintiff. The consideration in that agreement was Kshs 5,000,000/=.
3. As regards, the second agreement, the 2nd Defendant failed to construct a perimeter wall on the 1st Plaintiff's property known as L.R. No 93/1429 for the agreed total sum of Kshs 1,569,000/=.
4. In respect of the third agreement, the Plaintiffs paid the 1st Defendant a sum of Kshs 1,500,000/= for the purchase of unsurveyed land in Athi River being Plan No MKS/8/98/5 that had been allocated to the 2nd Defendant but once again the Defendants failed and/or refused to transfer the same to the Plaintiffs.
5. The Plaintiffs therefore sought the following reliefs:-
 - a. **The refund of Kshs 8,069,000/= with interest at the rate of 15% per annum from the 30th October 2006 until payment in full.**
 - b. **Costs of the suit.**
 - c. **Any other relief that this Honourable Court would deem fit to grant.**

6. The Defendants filed their Memorandum of Appearance and Statement of Defence dated 6th July 2012 and 19th July 2012 on 6th July 2012 and 23rd July 2012 respectively. The Plaintiff's Reply to the Statement of Defence dated 27th August 2012 was filed on the same date.
7. Despite being served notices by the Plaintiffs' advocates to attend court severally, the Defendants failed to do so and on 27th May 2014, the matter proceeded for hearing *ex parte* after the court was satisfied that the Defendants had been duly served with the hearing notice but had failed to attend court on that day.

LEGAL ANALYSIS

8. The 1st Plaintiff testified on his own behalf and that of the 2nd Plaintiff. He submitted copies of documents evidencing the aforesaid agreements and proof of payment of the sum of Kshs 8,069,900/=. His evidence was therefore unrebutted and/or uncontroverted and the court accepts the same.
9. Evidently, the said agreements were entered into on different dates. The dates of default for the different agreements were therefore not the same. It would therefore be difficult to peg the rate of interest of all the monies at 15% per annum from 30th October 2012.
10. The Plaintiffs did not justify to the court why they ought to be paid the said rate of interest from that date bearing in mind that it is only the Sale Agreement for 13th July 2006 that had a clause for payment of interest at the rate of 14% from 16th September 2012. Indeed, they did not properly articulate this issue in their written submissions dated 4th June 2014 and filed on 9th June 2014.
11. There were no demand letters showing if at all the Plaintiffs demanded the monies they had claimed from the Defendants herein between October 2006 and the time of filing suit herein. This would have guided the court in establishing the date from when interest would have been payable as interest would have clearly accrued from the date the monies were demanded for until payment. In the absence of such information, the court has come to the conclusion that it would only be fair to award interest at courts rates from the date of filing suit.
12. As they failed to provide proof that they had demanded for their monies and that the same remained unpaid, the court is not inclined to grant them interest for the six (6) years that they failed to pursue their claim. They were under an obligation to mitigate their losses.

DISPOSITION

13. In the circumstances foregoing, having considered the Plaintiffs' and Defendants' pleadings, documents in support of their cases and the Plaintiff's written submissions, the court is satisfied that the Plaintiffs were able to demonstrate that the Defendants were truly and justly indebted to them. Accordingly, the court hereby enters judgment in favour of the Plaintiffs against the Defendants jointly and severally for the sum of Kshs 8,069,000/= together with interest at court rates from the date of filing suit until payment in full. The Defendants will also bear the Plaintiffs' costs for the suit.
14. It is so ordered.

DATED and DELIVERED at NAIROBI this 14th day of August 2014

J. KAMAU

JUDGE